

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

OLASEBIKAN AKINMULERO,

Plaintiff,

V.

DEPARTMENT OF HOMELAND
SECURITY, *et al.*,

Defendants.

Cause No. C20-1135RSL

**ORDER GRANTING
MOTION FOR
RECONSIDERATION AND
DISMISSING CLAIMS**

On January 23, 2023, plaintiff’s motion for summary judgment was granted in part and the above-captioned matter was remanded to the United States Citizenship and Immigration Services (“USCIS”) for further consideration of plaintiff’s adjustment of status application. Defendants timely filed a motion for reconsideration (Dkt. # 73),¹ and the Court requested additional briefing (Dkt. # 77).² Having reviewed the submissions of the parties, the Court finds as follows:

¹ Because defendants properly filed their motion for reconsideration under Local Civil Rule 7(h)(2), Federal Rule of Civil Procedure 60 does not pose a bar to the relief requested.

² Defendants notified the Court that they had failed to properly serve the motion for reconsideration on plaintiff, and the briefing schedule was reset. Plaintiff's objection to this procedure (Dkt. # 78) is overruled.

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1 There is a split in this district regarding whether 8 U.S.C. § 1252(a)(2)(B) precludes
2 judicial review of the denial of an adjustment of status application made under 8 U.S.C. § 1255
3 in the circumstances presented here. *See Garcia v. USCIS*, No. 3:22-cv-5984-BJR, Dkt. # 37
4 (W.D. Wash. Apr. 17, 2023); *Hernandez v. USCIS*, No. 2:22-cv-00904-MJP, Dkt. # 14 (W.D.
5 Wash. Nov. 30, 2022). As the Honorable Marsha J. Pechman, United States District Judge,
6 correctly points out, “[n]either the Supreme Court nor the Ninth Circuit has squarely addressed
7 whether Subparagraph (B) applies outside of removal proceedings.” *Hernandez*, Dkt. # 14 at 9.
8 However, the situation was discussed by the Supreme Court in *Patel v. Garland*, with the
9 majority noting that Congress had amended the statute to “expressly extend[] the jurisdictional
10 bar to judgments made outside of removal proceedings at the same time they preserved review
11 of legal and constitutional questions made within removal proceedings.” 142 S. Ct. 1614, 1626
12 (2022). Every Court of Appeals that has considered the issue has concluded that judicial review
13 of adjustment of status determinations made by USCIS outside of the removal context is barred.
14 *Abuzeid v. Mayorkas*, 62 F.4th 578 (D.C. Cir. 2023); *Britkovyy v. Mayorkas*, 60 F.4th 1024 (7th
15 Cir. 2023); *Doe v. Sec'y, U.S. Dep't of Homeland Sec.*, No. 22-11818, 2023 WL 2564856 (11th
16 Cir. Mar. 20, 2023). And the Ninth Circuit has assumed without discussion on at least four
17 occasions that the jurisdiction-stripping provision of subparagraph (B) applies outside of the
18 removal context. *See Herrera v. Garland*, No. 21-17052, 2022 WL 17101156 (9th Cir. Nov. 22,
19 2022); *Poursina v. USCIS*, 936 F.3d 868 (9th Cir. 2019); *Gebhardt v. Nielsen*, 879 F.3d 980 (9th
20 Cir. 2018); *Hassan v. Chertoff*, 593 F.3d 785 (9th Cir. 2010) (per curiam).

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1 This interpretation is supported by the plain language of 8 U.S.C. § 1252(a)(2)(B), which
 2 states:

3 Notwithstanding any other provision of law (statutory or nonstatutory) . . . , and
 4 except as provided in subparagraph (D), *and regardless of whether the judgment,*
 5 *decision, or action is made in removal proceedings*, no court shall have
 6 jurisdiction to review—

7 (i) any judgment regarding the granting of relief under section . . . 1255 of
 8 this title

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 10 (emphasis added). Section 1255 is the section of the statute under which plaintiff sought
 11 adjustment of status, and “subparagraph (D) preserves review of legal and constitutional
 12 questions only when raised in a petition for review of a final order of removal,” which is not the
 13 situation presented here. *Patel*, 142 S. Ct. at 1626. Giving the ordinary meaning to the statutory
 14 language results in the conclusion that the Court lacks the power to review any aspect of the
 15 agency’s judgment regarding plaintiff’s adjustment of status application unless it falls within
 16 subparagraph (D). Judge Pechman does not suggest an alternative construction of the italicized
 17 language that would allow such review, instead focusing on “the presumption favoring judicial
 18 review of administrative action” and § 1252’s title, “Judicial review of orders of removal.”

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 22 *Hernandez*, Dkt. # 14 at 11-12. The Supreme Court expressly rejected the first argument, *Patel*,
 23 142 S. Ct. at 1627, and, while statutory titles and section headings “are tools available for the
 24 resolution of a doubt about the meaning of a statute,” *Porter v. Nussle*, 534 U.S. 516, 528

1 (2002), they “cannot substitute for the operative text of the statute,” *Fla. Dep’t of Revenue v.*
2 *Piccadilly Cafeterias, Inc.*, 554 U.S. 33, 47 (2008).

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5 For all of the foregoing reasons, the Court finds that it lacks subject matter jurisdiction
6 over plaintiff’s claims. The motion for reconsideration is GRANTED, and this matter is
7 DISMISSED.

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10 Dated this 24th day of April, 2023.

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13 Robert S. Lasnik
14 United States District Judge

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